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Filing date: **11/07/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177234
Party	Plaintiff Cardinal Health 303, Inc.
Correspondence Address	Joseph R. Dreitler Bricker & Eckler LLP 100 S. Third Street Columbus, OH 43215-4291 UNITED STATES jdreitler@bricker.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Mary R. True/
Date	11/07/2007
Attachments	Combined Amended Notices of Opposition.pdf (11 pages)(335464 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------------|---|------------------------------|
| 1. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,234 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 2. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,365 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 3. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,366 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 4. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,367 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 5. CARDINAL HEALTH 303, INC. | : | |
| Petitioner | : | |
| v. | : | Cancellation No.: 92-048,172 |
| THE ALARIS GROUP, INC. | : | |
| Registrant. | : | |

OPPOSER/PETITIONER CARDINAL HEALTH 303, INC.'S
COMBINED AMENDED NOTICES OF OPPOSITION

Pursuant to Rule 2.107(a) of the Trademark Rules of Practice of the Patent and Trademark Office, 27 C.F.R. §§ 2.102, and Federal Rule of Civil Procedure 15(a), Opposer/ Petitioner Cardinal Health 303, Inc., is filing its Combined Amended Notices of Opposition to delete the claims comprising Count Two, and to cite an additional registration as basis for

cancellation in the above-captioned matters. With these revisions, and the certificate of service, the Notices of Opposition have not been otherwise modified.

Cardinal Health 303, Inc., (hereinafter “Opposer”), a corporation organized under the laws of Delaware, located at and doing business at 10221 Wateridge Circle, San Diego, California 92121, is and will continue to be damaged by the above identified service mark applications (hereinafter “Applications”), in the name of The Alaris Group, Inc. (hereinafter “Applicant”), with a last known address of P.O. Box 24855, Edina, Minnesota 55424, and hereby opposes registration of the same under 15 U.S.C. §1063.

The grounds for opposition are as follows:

1. For almost a decade, long prior to the Applicant’s filing of the Applications, Opposer has been engaged in the development, manufacture, advertising, distribution and sale in interstate commerce of a wide variety of goods and services, including but not limited to medical instruments and equipment, the service and repair of medical instruments, equipment and accessories, the leasing and rental of medical instruments, equipment and accessories, and electronic medical equipment and software for patient care management, bearing the mark ALARIS, alone and in connection with its other marks.

2. As a result of Opposer’s widespread use and expenditure of resources to promote the goods and services offered under its ALARIS marks, as well as Opposer’s dedication to high quality goods and services, Opposer has acquired significant goodwill in and to the mark. Opposer’s ALARIS marks have come to represent the highest quality goods, as well as excellent service, as used in connection with those goods, and consumers have come to count on Opposer’s ALARIS marks to represent superior medical instruments and equipment, superior

servicing and leasing of medical instruments, equipment and accessories, and superior electronic medical equipment and software for patient care management.

3. Opposer is the owner of U.S. Trade/Service Mark Registration No. 2,279,724, registered on the Principal Register on September 21, 1999, directed to the mark ALARIS for use in connection with:

medical instruments and equipment, namely, infusion pumps and controllers, including volumetric infusion pumps, syringe pumps, programmable infusion pumps, programmable syringe pumps and the resident control programs; clinical vital signs measurement instruments, namely, thermometers for medical use, disposable thermometer covers, blood pressure measurement instruments, pulse rate measurement instruments, blood pressure cuffs, pulse oximetry instruments, namely, sensors and monitors, respiration measurement instruments, and ECG instruments; medical fluid administration sets for the delivery of medical fluids, namely, drug delivery tubing, clamps, flow control devices, drug infusion connectors, adapters, injection sites, needleless connectors, needleless ports, needleless injection sites, and medical valves; medical devices for the delivery of medical fluids, namely, drug delivery tubing, clamps, flow control devices, drug infusion connectors, adapters, injection sites, needleless connectors, needleless ports, needleless injection sites, and medical valves; intravenous fluid containers, monitors, alarms, rate meters; sphygmomanometers; enteric infusion pumps and bags therefor; medical instrument and intravenous fluid container stands and hanger devices; gastrointestinal feeding tubes; needle catheter jejunostomy kits, namely, tubing and needles; multiple specimen holders for medical use; cold and hot packs for chemically producing and absorbing heat for use in medical treatment and therapy in Class 010;

service and repair of medical instruments, equipment and accessories in Class 037;

leasing and rental of medical instruments, equipment, and accessories in Class 042.

The registration is in all respects valid and subsisting, and has enjoyed incontestable status since February 5, 2005. A copy of the Certificate of Registration is attached as Opposer's Exhibit A.

4. Opposer is the owner of U.S. Trade/Service Mark Registration No. 2,371,410, registered on the Principal Register July 25, 2000 in Class 9 directed to the mark ALARIS for use in connection with:

electronic equipment and accessories, namely, fluid monitors; fluid flow rate meters; metered infusion pumps; ammeters; computer programs for controlling and monitoring fluid flows and detecting obstructions to fluid flows; and computer programs for capturing, storing, integrating, and presenting data in patient care management systems in Class 009.

The registration is in all respects valid and subsisting, and has enjoyed incontestable status since September 30, 2005. A copy of the certificate of Registration is attached as Opposer's Exhibit B.

5. Application Serial No. 78/945,352, for the mark ALARIS, was filed on August 4, 2006, and is based on Applicant's contended intent to use the mark in commerce in connection with:

Franchise services, namely, offering technical and business management assistance in the establishment and operation of medical consulting primarily for the workers compensation industry in Class 35.

6. Application Serial No. 78/744,914, for the mark ALARIS SELECT, was filed on November 1, 2005, and is based on Applicant's contended use of the mark in commerce in connection with:

medical consulting services in the field of medical and vocational rehabilitation primarily responding to the needs of the workers compensation industry in Class 044.

7. Application Serial No. 78/945,025, for the mark ALARIS ADVANTAGE, was filed on August 4, 2006, and is based on Applicant's contended intent to use the mark in commerce in connection with:

franchise services, namely, offering technical and business management assistance in the establishment and operation of medical consulting primarily for the workers compensation industry in Class 035; and

medical consulting services in the field of medical and vocational rehabilitation primarily responding to the needs of the workers compensation industry in Class 044.

8. Application Serial No. 78/937,067, for the mark ALARISWARE, was filed on July 25, 2006, and is based on Applicant's contended intent to use the mark in commerce in connection with:

computer software for the collection, editing, organizing, modifying, book marking, transmission, storage, reporting and sharing of data and information namely in the field of medical consulting in Class 009.

9. The marks in these Applications are confusingly similar to Opposer's ALARIS marks in sound, sight and overall commercial impression.

10. Applicant's goods and services are related to the goods and services sold and provided in connection with Opposer's ALARIS marks, and/or represent a natural zone of expansion for Opposer, and such goods and services would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

11. Applicant's use of and intent to use these marks in the subject Applications in connection with its goods and services are likely to cause confusion, mistake, or deception as to the source of the origin of Applicant's goods and services, in that the public, the trade and others are likely to believe that Applicant's goods and services are the goods and services of Opposer or are in some way provided, sponsored, approved, licensed by or affiliated with or in some way legitimately connected to Opposer, all to Opposer's irreparable damage and injury.

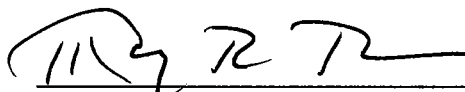
WHEREFORE, Opposer respectfully requests that these Oppositions be sustained and Applicant's Applications to register the subject marks be denied in all respects.

Please recognize Joseph R. Dreitler and Mary R. True, both members of the Bar of the State of Ohio, as its attorneys to prosecute these Notices of Opposition and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications to: Joseph R. Dreitler, c/o Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215, Telephone (614) 227-2347, Facsimile (614) 227-2390, E-mail: jdreitler@bricker.com. Please address correspondence to the said Joseph R. Dreitler.

Attachments – 2

Date: November 7th, 2007

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'JDreitler', written over a horizontal line.

Joseph R. Dreitler
Mary R. True
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2347
Facsimile: (614) 227-2390
Attorneys for Petitioner
Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer/Petitioner Cardinal Health 303, Inc.'s Combined Amended Notices of Opposition was served by first class mail, postage prepaid, and electronic mail this 7th day of November, 2007 upon:

Kristine M. Boyle, Esq.
Merchant & Gould
3200 IDS Center
80 South Eighth Street
Minneapolis MN 55402

Signed: _____

Melissa Hicks

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,930,177
For the Service Mark ALARIS
Registered on March 8, 2005

CARDINAL HEALTH 303, INC.

Petitioner

v.

THE ALARIS GROUP, INC.

Registrant

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Opposition No. 91-177,234

PETITIONER'S EXHIBIT A

Int. Cls.: 10, 37, and 42

Prior U.S. Cls.: 26, 39, 44, 100, 101, 103, and 106

Reg. No. 2,279,724

United States Patent and Trademark Office

Registered Sep. 21, 1999

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

ALARIS

**ALARIS MEDICAL SYSTEMS, INC. (DELAWARE CORPORATION)
10221 WATERIDGE CIRCLE
SAN DIEGO, CA 92121**

FOR: MEDICAL INSTRUMENTS AND EQUIPMENT, NAMELY, INFUSION PUMPS AND CONTROLLERS, INCLUDING VOLUMETRIC INFUSION PUMPS, SYRINGE PUMPS, PROGRAMMABLE INFUSION PUMPS, PROGRAMMABLE SYRINGE PUMPS AND THE RESIDENT CONTROL PROGRAMS; CLINICAL VITAL SIGNS MEASUREMENT INSTRUMENTS, NAMELY, THERMOMETERS FOR MEDICAL USE, DISPOSABLE THERMOMETER COVERS, BLOOD PRESSURE MEASUREMENT INSTRUMENTS, PULSE RATE MEASUREMENT INSTRUMENTS, BLOOD PRESSURE CUFFS, PULSE OXIMETRY INSTRUMENTS, NAMELY, SENSORS AND MONITORS, RESPIRATION MEASUREMENT INSTRUMENTS, AND ECG INSTRUMENTS; MEDICAL FLUID ADMINISTRATION SETS FOR THE DELIVERY OF MEDICAL FLUIDS, NAMELY, DRUG DELIVERY TUBING, CLAMPS, FLOW CONTROL DEVICES, DRUG INFUSION CONNECTORS, ADAPTERS, INJECTION SITES, NEEDLELESS CONNECTORS, NEEDLELESS PORTS, NEEDLELESS INJECTION SITES, AND MEDICAL VALVES; MEDICAL DEVICES FOR THE DELIVERY OF MEDICAL FLUIDS, NAMELY, DRUG DELIVERY TUBING, CLAMPS, FLOW CONTROL DEVICES, DRUG INFUSION CONNECTORS, ADAPTERS, INJEC-

TION SITES, NEEDLELESS CONNECTORS, NEEDLELESS PORTS, NEEDLELESS INJECTION SITES, AND MEDICAL VALVES; INTRAVENOUS FLUID CONTAINERS, MONITORS, ALARMS, RATE METERS; SPHYGMOMANOMETERS; ENTERIC INFUSION PUMPS AND BAGS THEREFOR; MEDICAL INSTRUMENT AND INTRAVENOUS FLUID CONTAINER STANDS AND HANGER DEVICES; GASTROINTESTINAL FEEDING TUBES; NEEDLE CATHETER JEJUNOSTOMY KITS, NAMELY, TUBING AND NEEDLES; MULTIPLE SPECIMEN HOLDERS FOR MEDICAL USE; COLD AND HOT PACKS FOR CHEMICALLY PRODUCING AND ABSORBING HEAT FOR USE IN MEDICAL TREATMENT AND THERAPY, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

FOR: SERVICE AND REPAIR OF MEDICAL INSTRUMENTS, EQUIPMENT AND ACCESSORIES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

FOR: LEASING AND RENTAL OF MEDICAL INSTRUMENTS, EQUIPMENT, AND ACCESSORIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

SN 75-234,438, FILED 1-31-1997.

JOAN LESLIE BISHOP, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,930,177
For the Service Mark ALARIS
Registered on March 8, 2005

CARDINAL HEALTH 303, INC.

Petitioner

v.

THE ALARIS GROUP, INC.

Registrant

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Opposition No. 91-177,234

PETITIONER'S EXHIBIT B

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,371,410

United States Patent and Trademark Office

Registered July 25, 2000

**TRADEMARK
PRINCIPAL REGISTER**

ALARIS

ALARIS MEDICAL SYSTEMS, INC. (DELAWARE
CORPORATION)
10221 WATERIDGE CIRCLE
SAN DIEGO, CA 92121

FOR: ELECTRONIC EQUIPMENT AND ACCESSORIES, NAMELY, FLUID MONITORS; FLUID FLOW RATE METERS; METERED INFUSION PUMPS; AMMETERS; COMPUTER PROGRAMS FOR CONTROLLING AND MONITORING FLUID FLOWS AND DETECTING OBSTRUCTIONS TO FLUID

FLOWS; AND COMPUTER PROGRAMS FOR CAPTURING, STORING, INTEGRATING, AND PRESENTING DATA IN PATIENT CARE MANAGEMENT SYSTEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-24-1997; IN COMMERCE 7-24-1997.

SN 75-223,900, FILED 1-10-1997.

JOAN LESLIE BISHOP, EXAMINING ATTORNEY